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COLGATE-PALMOLIVE COMPANY 909 RIVER ROAD PISCATAWAY, NJ 08855			EXAMINER KIM, JENNIFER M	
			ART UNIT 1617	PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/065,326
Filing Date: October 03, 2002
Appellant(s): ZICKER ET AL.

Wendell Ray Guffey
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 13, 2006 appealing from the Office action mailed June 16, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-7 and 9-11.

Claim 8 is withdrawn from consideration as not directed to the elected invention.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

WO2004/006688A1

DAVENPORT

1-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims and repeated herein:

Claims 1, 2, 5, 6 and 9-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Davenport et al. (WO 2004/006688A1) of record.

Claims 3, 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davenport (WO 2004/006688A1) of record.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

((e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1, 2, 5, 6 and 9-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Davenport et al. (WO 2004/006688A1) of record.

Davenport teaches a method for moderating the behavior of a healthy dog comprising feeding a high quality diet containing a high amount (behavior moderating amount) of DHA and EPA (preferred omega-3 fatty acids utilized by the Applicants, page 2 [0007] of instant specification). (page 4, lines 5-8, page 8, lines 3-17, page 10, line 3). Davenport teaches the diet can be formulated as to be dry (e.g. in kibble or other form) (dry matter). (page 6, last full-paragraph). Davenport teaches the diet can be formulated with 0.25% of DHA and 0.25% of EPA. (page 8, first and second full paragraph).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davenport (WO 2004/006688A1) of record.

Davenport teaches a method for moderating the behavior of a healthy dog comprising feeding a high quality diet containing a high amount (behavior moderating amount) of DHA and EPA (omega-3 fatty acids). (page 4, lines 5-8, page 8, lines 3-17,

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page 10, line 3). Davenport teaches the emotional reactivity and behavior of dogs is thought to be influenced by the specific content of their food. (page 2, 2nd paragraph). Davenport teaches the diet can be formulated as to be dry (e.g. in kibble or other form) (dry matter). (page 6, last full-paragraph). Davenport teaches the diet can be formulated with 0.25% of DHA and 0.25% of EPA. (page 8, first and second full paragraph).

Davenport does not teach the specified age of the dog set forth in claims 3, 4 and 7.

It would have been obvious to one of ordinary skill in the art to employ the high quality diet containing DHA and EPA taught by Davenport to a dog of any age since Davenport teaches the diet containing DHA and EPA is effective in behavior control of any healthy dog. One would have been motivated to make such modification in order to achieve moderated behavior by the specific content of food comprising DHA and EPA to all healthy dogs as taught by Davenport.

For these reasons the claimed subject matter is deemed to fail to patentably distinguish over the state of the art as represented by the cited references. The claims are therefore properly rejected under 35 U.S.C. 103.

(10) Response to Argument

With regarding 35 U.S. C. 102 rejection, Appellants' argument that claim 1 is not anticipated by Davenport because Davenport reports methods of moderating the

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behavior of a dog living in an animal shelter wherein the dog is fed a "high quality" diet containing DHA and EPA, but fails to describe any diet containing at least about 0.5% by weight of an omega-3 fatty acid or a mixture of omega-3 fatty acids as required by claim 1. This is not persuasive because Davenport teaches the method for moderating the behavior of a healthy dog comprising feeding a high quality diet containing a high amount (behavior moderating amount) of DHA and EPA (omega-3 fatty acids) and the amount of each of DHA and EPA to be employed in the high quality diet is up to about 0.25% DHA and to about 0.25% EPA. Therefore, this teaching fully anticipates Appellants' claimed invention because total amount of omega-3-fatty acids, DHA (0.25%) and EPA (0.25%) equals to 0.5% as claimed by the Appellants. Davenport clearly teaches the employment of both DHA and EPA in page 29, claim 10, page 14, Table 3; Davenport clearly teaches the each of amount of DHA and EPA can be employed to be up to about 0.25% in the "high quality diet", page 8, first and second full paragraphs. Appellants argue that Davenport does not discuss any diet having more than 0.25% by weight of single omega-3 fatty acid. This is not persuasive because on page 14, Table 3 clearly teaches that Diet B which is "high quality diet" as taught by Davenport teaches the combined weight % of EPA and DHA is 31%. Appellants argue that Davenport does not discuss any diet having more than 31%. This is not persuasive because Davenport is not limited to the content of "high quality diet" comprising EPA and DHA up to 31% and the specific amounts taught by Davenport extend to about 0.25% DHA and 0.25% of EPA summing up to about 0.5%. It is noted that Davenport on page 29, claim 10, teaches the "high quality diet" for the method of moderating the

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behavior of a dog has to be at least about 0.15% DHA and at least about 0.15% EPA, all by weight of the diet and the amounts of each of the fatty acids can be up to about 0.25% as taught by page 8, first two full paragraphs, and Table 3. Accordingly, Davenport's teaching clearly anticipates Appellant's claimed invention.

With regarding rejections under 35 U.S.C. 103(a), Appellants argue Davenport fails to teach or suggest all the present claim limitations and no motivation exist to modify Davenport to arrive at the present invention. This is not persuasive because the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Davenport teaches a method for moderating the behavior of a healthy dog comprising feeding a high quality diet containing a high amount (behavior moderating amount) of DHA and EPA (omega-3 fatty acids) in dry formulation. Therefore, it would have been obvious to one of ordinary skill in the art to employ the high quality diet containing DHA and EPA up to about 0.25% of DHA and 0.25% of EPA as taught by Davenport would work in a dog of any age set forth in Appellants' claims 3, 4 and 7 because Davenport teaches a diet containing high quality diet comprising omega-3 fatty acids (DHA and EPA) up to about 0.5% (0.25% + 0.25%) is effective in behavior control of any health dog. Absent any evidence to contrary, there would have been a reasonable expectation of success in

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control of behavior of any heal dog in any ages with high quality diet comprising DHA and EPA taught by Davenport. Thus, the claims fail to patentably distinguish over the state of the art as represented by the cited references.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Jmk

March 22, 2006


Conferees:

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SUPERVISORY PATENT EXAMINER



SHENGJUN WANG
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